

37 Am. Jur. 2d Fraud and Deceit § 16

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Fraud and Deceit

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I. Overview

B. Nature and Effect

§ 16. As related to or distinguished from other grounds for relief or of liability—Negligence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1

Fraud and negligence are terms indicative of different states of mind of the actor.¹ Fraud is a malfeasance, a positive act resulting ordinarily from a willful intent to deceive, while negligence is strictly nonfeasance, a wrongful act resulting from inattention, but not from design, and whatever its grade, does not include a purpose to do a wrongful act.² However, in some instances, a negligent misrepresentation is considered to be tantamount to actionable fraud.³ Thus, although negligence and fraud are not synonymous or legally equivalent terms, in a proper case, negligence may be so gross as to take the place of a deliberate intention to work a fraud.⁴

While the question of whether a parcel of real property harbored an unreasonably dangerous condition would be crucial to a negligence-based claim against the vendor, it has no bearing on a purchaser's fraud and misrepresentation claims.⁵

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Footnotes

- ¹ Walter v. State, 208 Ind. 231, 195 N.E. 268, 98 A.L.R. 607 (1935).
- ² Zero Mfg. Co. v. Husch, 743 S.W.2d 439 (Mo. Ct. App. E.D. 1987); Di Maio v. State, 135 Misc. 2d 1021, 517 N.Y.S.2d 675 (Ct. Cl. 1987).
- ³ Ostreyko v. B. C. Morton Organization, Inc., 310 So. 2d 316 (Fla. 3d DCA 1975).
- ⁴ Moser v. Spizzirro, 31 A.D.2d 537, 295 N.Y.S.2d 188 (2d Dep't 1968), order aff'd, 25 N.Y.2d 941, 305 N.Y.S.2d 153, 252 N.E.2d 632 (1969).
- ⁵ M&D, Inc. v. W.B. McConkey, 231 Mich. App. 22, 585 N.W.2d 33 (1998).

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